

LEGISLATURE OF NEBRASKA  
NINETY-SEVENTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 547**

Introduced by Landis, 46

Read first time January 11, 2001

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-6603 and  
2 44-6606, Reissue Revised Statutes of Nebraska, and  
3 section 28-631, Revised Statutes Supplement, 2000; to  
4 redefine terms for purposes of insurance fraud  
5 provisions; to change a fee provision; and to repeal the  
6 original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 28-631, Revised Statutes Supplement,  
2   2000, is amended to read:

3           28-631. (1) A person or entity commits a fraudulent  
4   insurance act if he or she:

5           (a) Knowingly and with intent to defraud or deceive  
6   presents, causes to be presented, or prepares with knowledge or  
7   belief that it will be presented to or by an insurer, or any agent  
8   of an insurer, any statement as part of, in support of, or in  
9   denial of a claim for payment or other benefit pursuant to an  
10   insurance policy knowing that the statement contains any false,  
11   incomplete, or misleading information concerning any fact or thing  
12   material to a claim;

13          (b) Assists, abets, solicits, or conspires with another  
14   to prepare or make any statement that is intended to be presented  
15   to or by an insurer or person in connection with or in support of  
16   any claim for payment or other benefit pursuant to an insurance  
17   policy knowing that the statement contains any false, incomplete,  
18   or misleading information concerning any fact or thing material to  
19   the claim;

20          (c) Makes any false or fraudulent representations as to  
21   the death or disability of a policy or certificate holder in any  
22   statement or certificate for the purpose of fraudulently obtaining  
23   money or benefit from an insurer;

24          (d) Knowingly and willfully transacts any contract,  
25   agreement, or instrument which violates this section;

26          (e) Receives money for the purpose of purchasing  
27   insurance and converts the money to the person's own benefit;

28          (f) Willfully embezzles, abstracts, purloins,

1 misappropriates, or converts money, funds, premiums, credits, or  
2 other property of an insurer or person engaged in the business of  
3 insurance;

4 (g) Knowingly and with intent to defraud or deceive  
5 issues fake or counterfeit insurance policies, certificates of  
6 insurance, insurance identification cards, or insurance binders;

7 (h) Knowingly and with intent to defraud or deceive  
8 possesses fake or counterfeit insurance policies, certificates of  
9 insurance, insurance identification cards, or insurance binders;

10 (i) Knowingly and with intent to defraud or deceive makes  
11 any false entry of a material fact in or pertaining to any document  
12 or statement filed with or required by the Department of Insurance;  
13 or

14 (j) Knowingly and with intent to defraud or deceive  
15 removes, conceals, alters, diverts, or destroys assets or records  
16 of an insurer or person engaged in the business of insurance or  
17 attempts to remove, conceal, alter, divert, or destroy assets or  
18 records of an insurer or person engaged in the business of  
19 insurance.

20 (2)(a) A violation of subdivisions (1)(a) through (f) of  
21 this section is a Class III felony when the amount involved is one  
22 thousand five hundred dollars or more.

23 (b) A violation of subdivisions (1)(a) through (f) of  
24 this section is a Class IV felony when the amount involved is five  
25 hundred dollars or more but less than one thousand five hundred  
26 dollars.

27 (c) A violation of subdivisions (1)(a) through (f) of  
28 this section is a Class I misdemeanor when the amount involved is

1 two hundred dollars or more but less than five hundred dollars.

2 (d) A violation of subdivisions (1)(a) through (f) of  
3 this section is a Class II misdemeanor when the amount involved is  
4 less than two hundred dollars.

5 (e) For any second or subsequent conviction under  
6 subdivision (2)(c) of this section, the violation is a Class IV  
7 felony.

8 (f) A violation of subdivisions (1)(g), (i), and (j) of  
9 this section is a Class IV felony.

10 (g) A violation of subdivision (1)(h) of this section is  
11 a Class I misdemeanor.

12 (3) Amounts taken pursuant to one scheme or course of  
13 conduct from one person, entity, or insurer may be aggregated in  
14 the indictment or information in determining the classification of  
15 the offense, except that amounts may not be aggregated into more  
16 than one offense.

17 (4) In any prosecution under this section, if the amounts  
18 are aggregated pursuant to subsection (3) of this section, the  
19 amount involved in the offense shall be an essential element of the  
20 offense that must be proved beyond a reasonable doubt.

21 (5) A prosecution under this section shall be in lieu of  
22 an action under section 44-6607.

23 (6) For purposes of this section:

24 (a) Insurer means any person or entity transacting  
25 insurance as defined in section 44-102 with or without a  
26 certificate of authority issued by the Director of Insurance.  
27 Insurer also means health maintenance organizations, legal service  
28 insurance corporations, prepaid limited health service

1 organizations, dental and other similar health service plans, and  
2 entities licensed pursuant to the Intergovernmental Risk Management  
3 Act and the Comprehensive Health Insurance Pool Act. Insurer also  
4 means an employer who is approved by the Nebraska Workers'  
5 Compensation Court as a self-insurer; and

6 (b) Statement includes, but is not limited to, any  
7 notice, statement, proof of loss, bill of lading, receipt for  
8 payment, invoice, account, estimate of property damages, bill for  
9 services, diagnosis, prescription, hospital or medical records,  
10 X-rays, test result, or other evidence of loss, injury, or expense,  
11 whether oral, written, or computer-generated.

12 Sec. 2. Section 44-6603, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 44-6603. For purposes of the Insurance Fraud Act:

15 (1) Department means the Department of Insurance;

16 (2) Director means the Director of Insurance;

17 (3) Insurer means any person or entity transacting  
18 insurance as defined in section 44-102 with or without a  
19 certificate of authority issued by the director. Insurer also  
20 means health maintenance organizations, legal service insurance  
21 corporations, prepaid limited health service organizations, dental  
22 and other similar health service plans, and entities licensed  
23 pursuant to the Intergovernmental Risk Management Act and the  
24 Comprehensive Health Insurance Pool Act. Insurer also means an  
25 employer who is approved by the Nebraska Workers' Compensation  
26 Court as a self-insurer; and

27 (4) Statement includes, but is not limited to, any  
28 notice, statement, proof of loss, bill of lading, receipt for

1 payment, invoice, account, estimate of property damages, bill for  
2 services, diagnosis, prescription, hospital or medical records,  
3 X-rays, test result, or other evidence of loss, injury, or expense,  
4 whether oral, written, or computer-generated.

5 Sec. 3. Section 44-6606, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 44-6606. (1) In order to investigate activities  
8 involving insurance fraud, the director shall appoint a sufficient  
9 staff to be known as the Insurance Fraud Prevention Division.

10 (2)(a) As specified by the director, division  
11 investigators who are certified law enforcement officers of the  
12 State of Nebraska shall be vested with the authority and power of a  
13 peace officer to carry out the laws of this state administered by  
14 the director. The general laws of this state applicable to peace  
15 officers shall be applicable to such investigators. Such  
16 investigators shall be empowered, among other powers, to search and  
17 arrest with or without a warrant, file and serve any lien, seize  
18 property, serve and return a summons, warrant, or subpoena issued  
19 by a court of law or the director, and bring an offender before any  
20 court with jurisdiction in this state, except that such  
21 investigators shall not be authorized to enforce any laws other  
22 than laws administered by the director.

23 (b) Subdivision (a) of this subsection shall not be  
24 construed to restrict any other law enforcement officer of this  
25 state from enforcing any state law, insurance or otherwise.

26 (3) The division shall:

27 (a) Initiate independent inquiries and conduct  
28 independent investigations when the division has cause to believe

1 that an act of insurance fraud has been or is currently being  
2 committed;

3 (b) Review reports or complaints of alleged insurance  
4 fraud to determine whether such reports require further  
5 investigation and to conduct such investigation;

6 (c) Conduct independent examinations of alleged  
7 fraudulent insurance acts and undertake independent studies to  
8 determine the extent of fraudulent insurance acts; and

9 (d) Cooperate with federal, state, and local law  
10 enforcement, prosecuting attorneys, and the Attorney General in the  
11 investigation and prosecution of insurance fraud violations. At  
12 the request of the division, through the director, the Attorney  
13 General shall prosecute fraudulent insurance acts through criminal  
14 or civil proceedings as authorized by the Insurance Fraud Act if,  
15 after investigation, the Attorney General is convinced that there  
16 is sufficient legal merit to justify the proceeding. The Attorney  
17 General, after consultation with the director, may refer cases of  
18 fraudulent insurance acts to a special assistant attorney general  
19 or county attorney for prosecution. Any costs directly associated  
20 with the prosecution and attorney's fees for any special assistant  
21 attorney general shall be paid by the division.

22 (4)(a) The director or his or her designee may:  
23 Administer oaths and affirmations; subpoena witnesses; compel  
24 attendance of witnesses; take evidence; and require the production  
25 of any books, papers, correspondence, memoranda, agreements,  
26 documents, records, and other tangible things which constitute or  
27 contain evidence that is deemed relevant or material to an  
28 investigation or enforcement of the Insurance Fraud Act, when it

1 shall appear that such action is necessary and proper. The  
2 attendance of witnesses and the production of records shall be  
3 required from any place within the State of Nebraska. Witnesses  
4 summoned by the director or by his or her designee shall be paid  
5 the same fees that are paid witnesses in the courts of the State of  
6 Nebraska and mileage at the rate provided in section 81-1176.

7 (b) A subpoena of the director or of his or her designee  
8 may be served by any person designated in the subpoena to serve it.  
9 Service upon a natural person may be made by certified mail or  
10 personal delivery of the subpoena to him or her. Service may be  
11 made upon a domestic or foreign insurer, corporation, or  
12 partnership, upon a domestic or foreign limited liability company,  
13 or upon any other unincorporated association which is subject to  
14 suit under a common name, or any other entity by delivering the  
15 subpoena to an officer, a managing or general agent, a member, or  
16 any other agent authorized by appointment or by law to receive  
17 service of process. The affidavit of the person serving the  
18 subpoena entered on a true copy thereof by the person serving it  
19 shall be proof of service.

20 (c) If any person refuses to obey a subpoena issued by  
21 the director or by his or her designee, the director or his or her  
22 designee may invoke the aid of any court of the State of Nebraska  
23 within the jurisdiction of which the investigation is carried on or  
24 of which the subpoenaed person is an inhabitant, carries on  
25 business, or may otherwise be found, to compel compliance with such  
26 subpoena.

27 (d) The court may issue an order requiring the subpoenaed  
28 person to appear before the director or his or her designee to



1 produce records, if so ordered, or to give testimony concerning the  
2 matter under investigation. Nothing in this section shall be  
3 construed to suspend or otherwise interfere with the operation of  
4 the Free Flow of Information Act.

5 (e) Any failure to obey the order of the court may be  
6 punished by the court as contempt. All process in any such case  
7 may be served in the judicial district in which the subpoenaed  
8 person is an inhabitant, carries on business, or may otherwise be  
9 found.

10 (5) If the division seeks evidence, documentation, or  
11 related materials located outside this state pertinent to an  
12 investigation or examination, it may designate representatives or  
13 deputies, including officials of the state where the matter is  
14 located, to secure and inspect the evidence, documentation, or  
15 materials on its behalf.

16 (6) The papers, documents, reports, and evidence of the  
17 department regarding the subject of an investigation of insurance  
18 fraud shall not be subject to public inspection for so long as the  
19 director deems reasonably necessary to complete the investigation  
20 or to protect the person investigated from unwarranted injury or so  
21 long as the director deems it to be in the public interest. Such  
22 papers, documents, reports, and evidence regarding the subject of  
23 an investigation of insurance fraud shall not be subject to  
24 subpoena until they are opened for public inspection by the  
25 department, unless the director consents, or until after notice to  
26 the department and a hearing, the court determines the department  
27 would not be unnecessarily hindered by such subpoena. Department  
28 investigators shall not be subject to subpoena in civil actions by

1 any court of this state to testify concerning any matter of which  
2 they have knowledge regarding a pending insurance fraud  
3 investigation by the department.

4 (7) On or before March 1 each year, each insurer as  
5 defined in section 44-103 holding a certificate of authority to  
6 transact the business of insurance in this state and each employer  
7 who is approved by the Nebraska Workers' Compensation Court as a  
8 self-insurer shall pay a fee as established by the director not to  
9 exceed two hundred dollars to the director to be remitted to the  
10 State Treasurer for credit to the Department of Insurance Cash  
11 Fund, which fees may be appropriated only to carry out the purposes  
12 of the Insurance Fraud Act. The willful refusal by any such  
13 self-insurer to pay the fee required under this subsection shall be  
14 grounds for the compensation court to suspend or revoke the  
15 approval of such self-insurer to provide self-insurance coverage of  
16 workers' compensation liability pursuant to section 48-145.  
17 Assessment associations and unincorporated mutual associations  
18 shall not be subject to this subsection.

19 Sec. 4. Original sections 44-6603 and 44-6606, Reissue  
20 Revised Statutes of Nebraska, and section 28-631, Revised Statutes  
21 Supplement, 2000, are repealed.